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February 14, 2014

Christopher Calfee, Senior Counsel
Governor's Office of Planning & Research
1400 Tenth Street
Sacramento, CA 95814

RE: Topics to be Addressed in 2014 CEQA Guidelines Update,
including Preliminary Evaluation of Alternative Methods of
Transportation Analysis

Dear Mr. Calfee:

Thank you for this opportunity to comment on the possible topics to be addressed in the planned 2014 Update to the CEQA Guidelines, both generally and in relation to potential methods of evaluating alternative methods of transportation analysis.

We are responding as the Regulations Action Team from the 2013 California Economic Summit, where consideration of non-legislative changes to CEQA and the potential to streamline CEQA processes were top priorities. Other Action Teams, such as Infrastructure and Housing, also raised issues concerning CEQA and their input should be actively solicited for the 2014 Update to the CEQA Guidelines.

In 2013, the Regulations Action Team established SOAR Teams (Streamline Our Agency Regulations) to provide pro-bono support to government to streamline selected regulations, including CEQA. The continuing need for CEQA reform, and ending CEQA's abuse for non-environmental purposes, were identified as high priorities in both the 2012 and 2013 California Economic Summits through 14 Regional Forums in 2012 and 16 in 2013. With respect to CEQA, our consistent focus has been on maintaining the original intent of the law and respect for the triple-bottom-line focus on the economy, the environment and social equity.

We support regulatory efforts to clarify the requirements of CEQA to promote certainty and reduce excess costs and delays, and to make full use of CEQA's existing streamlining tools. We applaud OPR's commitment to updating the CEQA Guidelines, and urge you to focus priority attention on these overall policy objectives.

We are particularly supportive of clarifying the fact that compliance with existing environmental-protection standards, which exist in statutes, laws and permit programs, provides substantial evidence that a regulated impact is avoided, minimized, or reduced to a less-than-

significant level. California has among the most stringent environmental standards in the world, and virtually all of them were adopted following CEQA's enactment in 1970. While we recognize that a previous Guideline revision addressing compliance with environmental standards was overturned in a court decision, that decision related to the "fair argument" standard and not the "substantial evidence" standard. There is ample caselaw supporting the fact that compliance with environmental standards provides substantial evidence that a project impact has been mitigated to less than significant levels, and we support updating the CEQA Guidelines to clarify this important issue.

We are also strongly supportive of Guideline revisions to reinforce and clarify CEQA's current streamlining provisions, particularly in relation to compliance with plans for which CEQA compliance has already occurred, and in relation to projects that fall within the scope of previously adopted Program Environmental Impact Reports. Our SOAR Team stands ready to assist interested government agencies in streamlining CEQA processes.

On the other hand, we do not support revising the CEQA Guidelines in a manner that is inconsistent with existing case law, or that promotes greater uncertainty or cost. Specifically, the use of the "business as usual" analytical methodology to assess whether projects achieve AB 32 reduction goal by requiring greenhouse-gas reductions in excess of those required as of the California Air Resource Board's approval of the 2008 Scoping Plan has been upheld by three appellate courts, has been adopted by two major air pollution control districts, and is in common use statewide. It is unlawful for OPR to attempt to reverse case law interpreting existing statutes, particularly since neither OPR's original greenhouse-gas Guideline nor the current proposal has provided any clear or practical direction to lead agencies and has thus resulted in scores of lawsuits alleging deficient greenhouse-gas analyses. This topic is now squarely in the courts, and absent new statutory authority OPR may not undermine existing court decisions.

Similarly, we do not support introducing an untested new analytical metric, for which models remain largely proprietary and thus costly to access, in the form of Vehicle Miles Travelled (VMT). While we applaud amending the Guidelines to reinforce that traffic delay and congestion, pursuant to SB 743, may not be a basis for concluding that a project has a significant adverse impact in certain limited infill contexts. Traffic delay, and traffic-related impacts, continue under SB 743 and applicable case law, to require study under Congestion Management Plans, under air-quality thresholds relating to carbon monoxide and toxic air contaminants, and under public-safety criteria. Traffic-impact analyses are also required to establish a nexus for the imposition of traffic-fee programs, and traffic mitigations for particular projects. It is nevertheless a positive step that traffic delay cannot serve as a basis for a significant impact finding for infill projects.

Introducing VMT as an untested new methodology for traffic evaluation will only increase CEQA's uncertainty, delay and cost. As with greenhouse gas, it is unrealistic and will promote scores of additional CEQA lawsuit-deficiency allegations for the Guidelines to identify a new impact category and then leave unresolved the issue of when or whether such an impact is "significant." SB 743 does not require CEQA to be

expanded to require consideration of VMT as a significant new form of transportation impact, nor is this CEQA expansion consistent with the Governor's many public statements about CEQA's complexity, cost and abuse.

In lieu of introducing a new VMT metric, we strongly encourage OPR to adopt a Guideline that affirms the new statutory authority of a local lead agency to consider alternatives to traffic delay in qualifying infill locations, and to reinforce that increasing traffic congestion no longer constitutes a lawful basis for making a significant impact conclusion.

We look forward to working with you on the 2014 Guidelines update, and thank you again for the opportunity to comment on these issues. We would welcome the opportunity to meet with you in the near future to further discuss these issues and stand ready, as the SOAR Team on CEQA, to assist you in streamlining the CEQA process while ensuring that California's high environmental standards are met.

If you have questions or would like to arrange a meeting to discuss the 2014 Guidelines update, please contact Julie Meier Wright at juliemeierwright@gmail.com or 619-300-5800.

Sincerely,

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